CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 454

FRANCES PERKINS, SECRETARY OF LABOR, AND EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION, PETITIONERS

vs.

MARIE ELIZABETH ELG

No. 455

MARIE ELIZABETH ELG, PETITIONER

vs.

FRANCES PERKINS, SECRETARY OF LABOR, EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITIONS FOR CERTIORARI FILED NOVEMBER 1, 1938
CERTIORARI GRANTED DECEMBER 5, 1938

SUPREME COURT OF THE UNITED STATES

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1 [Caption omitted.]

In United States District Court, District of Columbia

Equity No. 63408

MARIE ELIZABETH ELG, MT. KISCO, N. Y.

vs.

FRANCES PERKINS, SECRETARY OF LABOR, EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION, AND CORDELL HULL, SECRETARY OF STATE

Bill of complaint

Filed January 14, 1937

The complaint of Marie Elizabeth Elg by Henry F. Butler, her attorney, respectfully alleges:

1. Plaintiff was born on October 2, 1907, in the City and State of New York, as appears by her birth certificate issued by the proper authorities, a copy whereof is hereto annexed marked "Exhibit A" and made a part hereof, and she is now residing at Mt. Kisco in Westchester County in the State of New York in the United States; during all of her life plaintiff has been a citizen of the United States, has never married and has never committed any act or executed any instrument or authorized anyone on her behalf to commit any act or execute any instrument of expatriation or renunciation of her American citizenship or which would or could affect that citizenship in any manner whatsoever.

2. The Defendant, Frances Perkins, is Secretary of Labor of the United States, and the Defendant Edward J. Shaughnessy, is Acting Commissioner of Immigration and Naturalization, and said defendants are charged with the execution of the laws relating to the immigration into, and the deportation from, the United States of aliens and the enforcement of the laws and statutes of the United States in connection therewith and in relation thereto, but neither of the said defendants has any jurisdiction whatever over, or in regard to, the exclusion or deportation from the United States of any citizen thereof.

3. The Defendant, Cordell Hull, is Secretary of State of the United States and is charged with and has jurisdiction over the issuing of passports to citizens of the United States. The Passport Division of the Department of State of which Ruth B. Shipley is chief, has the direct supervision of matters connected with the issuing of passports and the refusal to issue the same and the acts and written declarations of the Passport Division as done and issued by the Chief of the Passport Division are, to all legal effect and pur-

poses, the acts and declarations of the Defendant Hull and for which he is responsible as Secretary of State of the United States.

4. During the year 1928, before plaintiff was 21 years of age, she was residing with her parents in Sweden and, through one Valdemar Haneson, inquired of the proper authorities what course she should pursue in order to return to the United States where she was born and from which country, without her own volition or any action on her own part, she had been taken to Sweden when she was about four years of age, and plaintiff was informed in writing by the then Vice Consul of the United States at Göteborg, Sweden, through said Haneson, that if she returned to the United States before attaining the age of twenty-one years her birth certificate and identification papers were all the evidence that was needed for her re-entry therein, but that if she did not return until after attaining the age of twenty-one years, she should make application for an American passport, all of which plaintiff believes and alleges was in accordance with the law of the United States at all times as evidenced by a communication from said Vice Consul dated June 11, 1928, addressed to said Haneson, in a letter in the Swedish language, a copy of which and a translation thereof are hereto annexed marked "Exhibit B1 and B2" and made part hereof, and a communication dated October 29, 1935, from the American Consul at Göteborg to plaintiff's mother and referring to the issuance of the said passport and a translation thereof are also hereto annexed marked "Exhibits B3 and B4" and made part hereof.

5. After the receipt of the letter of said American Vice Consul of June 1, 1928 (Exhibit B1), and also after she had, on October 2, 1928, attained twenty-one years of age but within one year thereafter, on May 13, 1929, plaintiff, at the American Vice Consulate in Göteborg, Sweden, duly signed and on her oath verified, an application for a passport in the regular form provided by the Department of State of the United States in which she swore allegiance to the United States and stated that she desired to remain a citizen of the United States and intended to return thereto for permanent residence; said application set forth all the required facts including that she was a native-born citizen aged over twenty-one years; that her parents were at the time of her birth naturalized citizens of the United States and were living therein; that when she was four years of age she had been taken to Sweden; that her father had returned to Sweden in 1922 (seven years prior to the date of the application) for permanent residence and had ever since 1922 resided and at the date of the application was residing in Sweden; and that she had during that time been residing with him, all of which appears in said application which was transmitted by the American Vice Consul to the Department of State in Washington, D. C., where it is now
3 on file and a copy whereof is hereto annexed marked "Exhibit C" and made part hereof.

6. Thereafter, as plaintiff is informed and believes, the Secretary of State in writing instructed the American Vice Consul at Göteborg to issue to plaintiff a passport as an American native born citizen, but plaintiff cannot annex a copy of such instructions as the defendant Hull has refused to give plaintiff or her representatives a copy thereof or to allow an inspection thereof and plaintiff prays this court to direct defendant Hull to produce the original of said instruction on the trial of this action.

7. After receiving written instructions as aforesaid from the Secretary of State, the said American Vice Consul duly issued and delivered to plaintiff Passport No. 91, issued and dated July 22, 1929, and which has never been recalled or cancelled, certifying that she was a native born citizen of the United States a copy of which passport is hereto annexed marked Exhibit D and made part hereof, and the original of which will be produced on the trial of this action.

8. After receiving said passport, plaintiff on or about September 7, 1929, sailed from Sweden on the Steamer Gripsholm and arrived on September 17, 1929, at the port of New York where she disembarked and was admitted to the United States as a United States citizen and those facts were duly entered on the records of the Port of New York as appears by a letter of the Commissioner of Immigration and Naturalization hereto annexed marked Exhibit E and made part hereof.

9. On or about April 10, 1935, plaintiff received a written notice, dated April 8, 1935, from the United States Department of Labor to the effect that she was illegally remaining in the United States because she was not a citizen thereof, and ever since that date she has been subjected to proceedings instituted by the predecessor of defendant Shaughnessy and continued by him, to require her to promptly leave the United States or threatening, in case of her not so doing, that she would be deported therefrom as an alien improperly therein, and this notwithstanding plaintiff has proved to said defendant Shaughnessy and his predecessor in office that she is a native born citizen of the United States and has never by any act on her part expatriated herself therefrom; and as defendant Perkins and defendant Shaughnessy and his predecessor in office have refused to acknowledge her right as a native born American citizen to remain in the United States an actual controversy has arisen between the plaintiff and said defendants Perkins and Shaughnessy within the meaning of the Declaratory Judgment Act of June 14, 1934, as amended, and which this court has jurisdiction to determine. That such actual controversy does exist appears not only by this allegation but also by communications addressed to plaintiff copies of some of which are hereto annexed as follows: that above referred to in form of letter from Byron H. Uhl, District Director of the Immigration and Naturalization Service of the Department of Labor for the District of New York, and whose acts and written declarations are done and issued by authority of the Secretary of Labor and

the Commissioner of Immigration and Naturalization, dated April 8, 1935, copy of which is hereto annexed marked Exhibit F1 and made part hereof; plaintiff is also advised that notwithstanding the circumstances of her case were presented to certain persons in the Department of Labor, collectively known as the Board of Review, her attorneys on November 4, 1935, were notified "in view of the fact that the Swedish Foreign Office has stated that this woman (meaning the plaintiff) gained Swedish nationality after living in Sweden when her father reacquired Swedish citizenship, there is no reason why any change should be made in the outstanding decision" which was to the effect that she was illegally in the United States as an alien and subject to deportation as such therefrom; and plaintiff is further advised that the conclusions of said Board of Review are expressed in writing but are contained in the files of the Labor Department of the United States and copies thereof are not available but are in the possession of the defendants Perkins and Shaughnessy, and she prays that they may be required to produce the same on the trial of this action; and on July 3, 1936, plaintiff's attorney received a letter signed by J. H. Wagner by direction of the Commissioner of Immigration and Naturalization, dated July 2, 1936, to the effect that plaintiff would be allowed sixty days further for the purpose of presenting proof of her American citizenship, copy of which is hereto annexed, marked Exhibit F2, and made part hereof; and on October 14, 1936, plaintiff's attorney received a letter from W. W. Brown, Assistant to said Commissioner, written by direction of said Commissioner, dated October 13, 1936, stating that the District Director at Ellis Island, New York, had been instructed to take no steps looking to the enforced departure of the plaintiff prior to February 1, 1937, copy of which is hereto annexed, marked Exhibit F3, and made part hereof; plaintiff alleges that said proceedings have for their sole purpose her deportation from the United States on the ground that she is illegally remaining therein as an alien and, notwithstanding the postponement in the letters above referred to, said proceedings are still in full force and effect to her continuing great injury and annoyance and such proceedings can only be terminated by an order of a court of competent jurisdiction enjoining the defendants Perkins and Shaughnessy from further continuing the same.

10. On or about July 16, 1936, plaintiff duly filed an application for a passport as a United States citizen in the proper office and which was duly transmitted to the Department of State of the United States as appears by a copy thereof marked Exhibit G and made part hereof. As a native born citizen of the United States, who has not expatriated herself or done any act justifying the Secretary of State in refusing to issue the said plaintiff such passport, she is entitled to have the same issued to her. On July 29, 1936, however, plaintiff was informed by a letter addressed to her by the Chief of the Passport Division of the Department of State that her applica-

ion for such passport was denied, but solely on the ground that she had lost her native born American citizenship by reason of her father, Gustav Elg, having returned to Sweden on July 25, 1922 and remaining there until July 25, 1924, on which day under paragraph 1 of Section 2 of the Act of March 2, 1907, and the provisions of the Naturalization Convention of 1869 and the laws of Sweden as they existed on July 25, 1924, he had become naturalized as a Swedish citizen in conformity with the laws of Sweden, with the consequent loss of his American citizenship by naturalization, on July 25, 1924, as had also his minor American born children, residing with him in Sweden, including plaintiff as appeared by the written report of the Consul of the United States at Göteborg, Sweden. At the time the report on Gustav Elg's resumption of Swedish citizenship referred to in said letter was made, the plaintiff was residing in New York City, as appears by the letters of the Chief of Passport Division dated respectively July 29, September 25 and 26, 1936, and the report of the United States Consul, November 13, 1934, copies of which are hereto annexed, marked Exhibits H1, H2, H3, and H4, respectively and made part hereof; but plaintiff does not admit that the facts and conclusions of law as set forth in said exhibits are correct and expressly denies that the facts as stated justify the conclusion of law that she is now a citizen of the United States.

11. Such refusal to issue her a passport on the grounds alleged is not only a serious injury to plaintiff but has created an actual controversy between her and defendant Hull for whom the Chief of the Passport Division was authorized to, and did, act in such refusal to issue such passport and basing it solely on the ground of her loss of American citizenship. Such a controversy exists because, as plaintiff is informed and believes, defendant Hull has not only refused to issue a passport to plaintiff, solely on said ground, but has transmitted to defendants Perkins and to the Bureau of Immigration and Naturalization various documents, reports and opinions of members of the staff of the Department of State impugning and denying plaintiff's American citizenship, and on the authority of which plaintiff has reason to believe, and therefore alleges, defendants Perkins and Shaughnessy and his predecessor in office have based and are continuing to prosecute the proceedings having in view plaintiff's deportation from the United States.

12. The aforesaid action of defendants individually and jointly are resulting in great, continuing, and irreparable damage to plaintiff and causing her anxiety, trouble, loss of time and expense and will continue to do so unless, and until, her American citizenship shall be so established by the judgment of a court of competent jurisdiction, as is this court, that defendants Perkins and Shaughnessy cannot continue to annoy, molest, and cause expense to her by continuing the pending proceedings to have her deported from the United States and defendant Hull cannot continue to assert that she is not a citizen of the United States and refuse to issue her a pass-

port as such solely on that ground, all of which actions of defendants and each and all of them are wholly without any basis on, but are wholly contrary to, the law of the United States.

18. Plaintiff has greatly suffered and will continue to suffer great and irreparable wrong if defendants, or any of them, continue to deny that she is a citizen of the United States and endeavor to deprive her of the rights of such citizenship which are of a great and inestimable value far in excess of any amount necessary to give this court jurisdiction of this case brought by plaintiff to protect her rights which have been and are being curtailed and infringed by the defendants as heretofore set forth in this complaint.

6 Wherefore plaintiff prays this honorable Court—

1. To enter a Declaratory Judgment pursuant to the provisions of the Act of June 14, 1934, as amended, declaring and adjudging that she is a native born citizen of the United States and has never committed any act or executed any instrument of expatriation from the United States or renunciation of her citizenship thereof, nor has any such act or instrument been committed or executed on her behalf by any other person, and that she is entitled to all the rights and privileges of a citizen of the United States.

2. That defendant Perkins, individually and as Secretary of Labor and defendant Shaughnessy, individually and as Acting Commissioner of Immigration and Naturalization be, and each of them be, enjoined from instituting or continuing to prosecute any proceedings for the purposes of deporting plaintiff from the United States or in any way interfering with her residence therein.

3. That defendant Cordell Hull individually and as Secretary of State and all persons acting for him as such be enjoined from making any statements oral or written to any person or persons or to any public official to the effect that plaintiff is not a citizen of the United States and entitled to all the rights and privileges of such citizenship and from refusing to issue her a passport solely on the ground that she is not such a citizen.

4. And plaintiff also prays that inasmuch as defendants Perkins and Shaughnessy claim they have the right under the law of the United States at any time to issue an order of deportation and arrest against the plaintiff and may do so at any time after February 1, 1937, without further notice to her and it will be impossible for this case to be heard and determined before that date, and such action would cause plaintiff further great and irreparable injury, a temporary injunction issue out of this court against defendants Perkins and Shaughnessy, individually and as officers, enjoining them and each of them and all persons acting under them or either of them from any further action on their part in the proceedings already instituted and above referred to in this complaint for the deportation of the plaintiff and that such injunction continue until final judgment shall have been rendered in this action.

5. That the plaintiff may have such further relief as may be proper and just in the circumstances.

MARIE ELIZABETH ELG,
By HENRY F. BUTLER,
Attorney for the Plaintiff.

[*Duly sworn to by Marie Elizabeth Elg; jurat omitted in printing.*]

7 *Abstract of complaint*

Paragraphs 1, 2, and 3

Allege birth in United States, residence herein at present time, and denies any act of expatriation (Exhibit A, Birth Certificate), and sets forth official positions of defendants.

Paragraph 4

Sets forth how plaintiff was taken to Sweden during minority, residence of parents there, and information obtained in letters from American Consul as to her American citizenship (Exhibits B1, B2, B3, and B4).

Paragraphs 5, 6, 7, and 8

Set forth plaintiff's application through American Consul for passport (Exhibit C), and instructions of State Department for its issuance and issuance thereof (Exhibit D details of), and alleges arrival of plaintiff at port of New York on September 17, 1929, and admission as American citizen (Exhibit E).

Paragraph 9

Sets forth institution of proceedings for deportation of plaintiff, which she asks in this case to have enjoined (Exhibits F1, F2, F3), and asserts that controversy has arisen under Declaratory Judgment Act of 1934 between plaintiff and defendants Perkins and Shaughnessy.

Paragraphs 10 and 11

Set forth plaintiff's application in 1936 to Secretary of State for passport as American citizen (Exhibit G), his refusal to issue same on ground of non-citizenship of plaintiff (Exhibits H1, H2, H3, and H4); asserts that similar actual controversy has arisen between plaintiff and defendant Hull.

Paragraphs 12 and 13

Assert the great, continuing, and irreparable damage to which defendants have subjected and still are subjecting plaintiff.

Prayer

(1) To have a Declaratory Judgment that she is a citizen of the United States; (2) To enjoin defendants Perkins and Shaughnessy from further prosecuting deportation proceedings; (3) To enjoin defendant Hull from impugning or denying plaintiff's American citizenship; (4) To have an injunction pendente lite; and (5) To have other and proper relief.

3 *List of exhibits to complaint*

Paragraph 1, Exhibit A. Birth Certificate.

Paragraph 4, 5, Exhibit B1. Original letter (in Swedish) from Consul von Struve to Superintendent Haneson, June 11, 1928. Exhibit B2. Translation of B1. Exhibit B3. Original letter (in Swedish) from Consul Yates, October 29, 1935. Exhibit B4. Translation of B3.

Paragraph 5, Exhibit C. Plaintiff's application for passport, May 13, 1929.

Paragraph 7, Exhibit D. Plaintiff's passport, No. 91.

Paragraph 8, Exhibit E. Letter from Commissioner of Immigration and Naturalization, December 24, 1936, advising that New York port records show applicant's arrival, September 27, 1929, and admission as a United States citizen.

Paragraph 9, Exhibit F1. Letter of District Director Byron J. Uhl, advising plaintiff that she was illegally in United States. Exhibit F2. Letter of Commissioner of Immigration and Naturalization of July 2, 1936, extending time sixty days. Exhibit F3. Letter of Commissioner of Immigration and Naturalization of October 13, 1936, suspending proceedings until Feb. 1, 1937.

Paragraph 10, Exhibit G. Plaintiff's passport application, July 16, 1936. Exhibit H1. Letter of Chief of Passport of July 29, 1936, denying application on grounds of noncitizenship. Exhibit H2. Letter of Chief of Passport, September 25, 1936, enclosing report of Consul in regard to Gustav Elg's citizenship. Exhibit H3. Report of Consul Harnden regarding Gustav Elg's citizenship. Exhibit H4. Letter of Chief of Passport of September 26, 1936.

Exhibit A

CITY OF NEW YORK,
DEPARTMENT OF HEALTH, BUREAU OF RECORDS,
New York, N. Y., July 1, 1936.

Below is a photostatic copy of a certificate on file in the Bureau of Records of the Department of Health of the City of New York.

The City of New York, Department of Health. State of New York, Certificate and Record of Birth of, Name of child, Marie Elizabeth Elg, Sex, Female; Color, White; Date of Birth, Oct. 2d, 1907; Place of Birth, Street and Number, 293—18 St.; Father's Name, Gustav Elg; Father's Residence, 293—18 St.; Father's Birthplace, Sweden; Father's Age, 28 yrs.; No. of Certificate, 30097; Father's Occupa-

tion, Sailor; Mother's Name, Evelyn Elg; Mother's Name before Marriage, Evelyn Pattison; Mother's Residence, 293—18 St.; Mother's Birthplace, Sweden; Mother's Age, 26 yrs.; Number of Previous Children, None; How many now living (in all), 1; Name and address of person making this report, Signature.

WM. SILBERMAN, M. D.,
Residence, 701—4 Ave.

Date of Report, Oct. 10th, 1907. This is to certify the foregoing is a true copy.

THOMAS J. DUFFIELD,
Registrar of Records.

Signature illegible.
[OFFICIAL SEAL]

———— ————,
Ass't. Registrar of Records.

9 *Exhibit B1*

AMERICAN CONSULAR SERVICE,
Göteborg, den 11te juni, 1928.

REKTOR VALDEMAR HANESON,
Grebbestad.

Som svar på Edert brev av den 4 de juni, 1928, rörande en i Förenta Staterna född flickas önskan att återresa dit, ber jag få meddela följande:

Ifall Fröken Elg reser innan hon fyllt 21 år, behöver hon icke andra papper än sin Amerikanska födelseattest samt ett identifieringsdokument med fotografi.

Reser hon ej förr än efter fyllda 21 år, torte hon infinna sig personligen på detta onsulat för att inlägga ansökan om Amerikanskt pass. Hon bör då medhava:

Sin amerikanska födelseattest, och dopattest, om i besittning av sådan.

Ett identifieringsdokument med fotografi, utfärdat av prästen eller landsfiskalen, under dess sigill.

Tre passfotografier,

Konsulatsavgiften, Kr. 3.80.

Det vore även önskvärt att hon vid besöket å Konsulatet vore i besittning av upplysning om när hennes far emigrerade till Förenta Staterna, samt när och var han blev amerikansk medborgare, ifall han varit detta. Namn och adress på två personer i Förenta Staterna vilka ha kännedom om hennes födelse därstädes, torde även medhavas.

En tid av minst två månader måste väntas förflyta efter det hon infunnit sig på konsulatet, innan svar på hennes passansökan kan väntas anlända från Washington.

Högaktningsfullt,

(Signed) H. C. VON STRUVE,
H. C. von Struve,
Americansk Konsul.

130. KH.

Exhibit B2

[Translation]

AMERICAN CONSULAR SERVICE,
Göteborg, June 11, 1928.

Superintendent VALDEMAR HANESON,
Grebbestad.

Replying to your letter of June 4th, 1928, concerning the contemplated trip to the United States of a girl born there, I beg to inform as follows:

In the event that Miss Elg departs before she attains her twenty-first year, she will require no other papers than her American birth certificate together with an identification document with photograph.

Does she not leave until after attaining her twenty-first year, she may call personally at this Consulate to submit application for an American passport. She must then bring with her:

10 Her American birth certificate, or baptismal record, if in possession thereof;

An identification document with photograph, made out by a clergyman or county clerk, under their (hand and) seal;

Three passport photographs, and

Consular fee of Kr. 3.80.

It would be desirable also that on the occasion of her call at the Consulate she be in possession of information as to when her father emigrated to the United States, and as to when and where he became an American citizen, if that is the case. Also the names and addresses of two persons in the United States, who have knowledge as to her birth there, are desirable.

An interval of at least two months should be anticipated to transpire after her visit to the Consulate before a reply on the passport request can be expected from Washington.

Very truly yours,

H. C. VON STRUVE,
American Consul.

130. KH.

Exhibit B3

Ref. No. 130—LDY/KHL.

AMERICAN CONSULAR SERVICE,
Göteborg, den 29de oktober, 1935.

Fru EVELYN ELG,
Rörvik, Grebbestad.

Härmed erkännes Edert brev av den 28 ds. beträffande Edor dotter, Marie Elisabeth Elg.

Det meddelas härmed att de svårigheter Eder dotter nu erfar uppstått genom att tolkningen av vissa lager och bestämmelser med avseende på medborgarskap numera ändrats. Då Eder dotter i 1929

reste till Förenta Staterna ansågs det att varje person som var rödd i Förenta Staterna utan tvivel var amerikansk medborgare, obeaktet faderns medborgarskap. Hon erhöll således ett amerikanskt pass för sin resa. Emellertid anses det numera att en hinderårig som enligt svensk lag följer sin faders medborgarskap och med honom blivit svensk medborgare då har återtagit svenskt medborgarskap, då samtidigt förlorar sin rätt till amerikanskt medborgarskap, trots sin födelse i Förenta Staterna. Enligt nuvarande tolkning skulle Eder dotter således icke haft rättighet att å bervända till Förenta Staterna på att amerikanskt pass, enär hon blivit svensk medborgare samtidigt somsin för 1924.

Då passet utfär dades av detta Konsulat efter bemynidgande av Department of State, Washington, kan Konsulatet tyvärr icke bistå med något yttrande om de åtgär der som kunna vidtagas av Eder dotter, utan bör hon tillskriva the Secretary of State, Washington, D. C., med begäran om utredning i ärendet.

Högaktningsfullt,

(Signed) LLOYD D. YATES,
Amerikansk Konsul.

Bil: Brev i retur.

11 *Exhibit B4*

[Translation]

AMERICAN CONSULAR SERVICE,
Göteborg, October 29, 1935.

MRS. EVELYN ELG,
Rörvik, Grebbestad.

The receipt of your letter of the 28th instant in the matter of your daughter, Marie Elisabeth Elg, is hereby acknowledged.

You are hereby informed that the difficulties your daughter is now experiencing have arisen because of the fact that the interpretation of certain law and decisions as regards citizenship have undergone a change. When your daughter went to the United States in 1929, it was considered that any person born in the United States would undoubtedly be an American citizen, irrespective of the father's allegiance; thus, an American passport for the trip was issued to her. Since then, it has been decided that a minor should, in accordance with Swedish law, follow the father's allegiance and thus together with him, become a Swedish subject upon retrieving the Swedish allegiance, inasmuch as the American citizenship is simultaneously lost notwithstanding a birth in the United States. Your daughter should, therefore, in accordance with the present interpretation, no longer be entitled to a return to the United States on an American passport, as she became a Swedish subject together with her father in 1924.

In view of the fact that passports are issued by this Consulate only after receipt of authorization from the Department of State in

Washington, this Consulate is at this time unable to contribute any opinion as to what your daughter might do in the matter but would advise her to write to the Secretary of State, Washington, D. C, asking for a final opinion.

Very truly yours,

LLOYD D. YATES,
American Consul.

Enc.: Returned letter.

Exhibit D

Front cover: Passport (seal of the United States) United States of America.

Inside front cover: Present this passport with your application for a new passport. Notice.—The bearer should sign his name below as directed. He should also sign the passport in the space provided therefor at the bottom of page three.

Marie Elisabeth Elg, Signature of bearer, 663–78 St.

Bearer's address in the United States, Brooklyn, N. Y.

Rörvik pr. Grebbstad, Sverige, Bearer's foreign address. 663-78 Brooklyn, N. Y.

In case of death or accident notify Johan S. Elg, Name of person to be notified, 663 78 St., Brooklyn, N. Y., Exact address.

CAUTION.—This passport is a valuable document. Due care should be taken to see that it does not pass into the possession of an unauthorized person. If it is lost or destroyed the fact and circumstances of the loss should be immediately reported to the Pass-
12 port Division, Department of State, or to the nearest American Consulate, and to the local police authorities. New passports in such cases can be issued only after exhaustive inquiry. 1–1167.

Page 1. No. 91. Passport.—Consulate of the United States of America at Göteborg, Sweden. Service #960. Fee $9.00 sg. Kr. 33.66 American Foreign Service $9.00 Fee Stamp, cancelled by consul's stamp. E 67041.

Page 2. I, the undersigned, Consul of the United States of America, hereby request all whom it may concern to permit safely and freely to pass, and in case of need to give all lawful aid and protection to Marie Elisabeth Elg, a citizen of the United States. The bearer is accompanied by his Wife, Minor children (American Consulate Seal). Given under my hand and the seal of the Consulate of the United States at Göteborg, Sweden, July 22, 1929. (sgd.) H. C. von Struve.

Page 3. Description of bearer. Height 5 feet 5 inches. Hair brown. Eyes gray. Distinguishing marks or feature: Place of birth New York, N. Y., U. S. A. Date of birth October 2, 1907. Occupation, domestic. Signature of bearer. (Blank on this page but on photograph on page 4.)

Page 4. Photograph of bearer. Signature on Photograph. Page 5. This passport is good for travel in all countries unless otherwise

OATH OF ALLEGIANCE

I, Anna Elizabeth Ely (Signature in full of applicant)

[seal] Subscribed and sworn to before me this 13th day of May, 1929.

H. C. Bier
Vice Consul of the United States of America at Gothenburg, Sweden.

DESCRIPTION OF APPLICANT

Height: 5 feet, 8 inches. Sex: F
Male: BROWN Eyes: GREY
Distinguishing marks or features: XX

Place of birth: New York, N.Y., U.S.A.
Date of birth: October 2, 1897.
Occupation: Housework.

(Identifying documents submitted on behalf of applicant: Photostatic copy of Birth Record issued at New York on Dec. 20, 1928. (To Pass) Baptismal Certificate. Identifying affidavit bearing photograph. Cert. of Naturalization of Father. (All veiled)

witnesses: Mrs. Elias Noll, 626 Orington Ave., Brooklyn, N.Y.
Mrs. Emelie Svensson, 928 Ellsworth Ave., Bronx, New York City, N.Y.

AFFIDAVIT OF IDENTIFYING WITNESS

I, the undersigned, solemnly swear that I am a subject of Sweden, that I reside at the address written below my signature hereto affixed; that I know the applicant who executed the declaration set forth in his citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further,

I solemnly swear that I have known the applicant personally for 20 years.

(Signature of witness) Anna Hardy
Mrs. Anna Hardby,
(Residence address of witness) Riskagatan 15, Gothenburg, Sweden.

[seal]

Subscribed and sworn to before me this 13th day of May, 1929.

H. C. Bier
Vice Consul of the United States of America at Gothenburg, Sweden.

The applicant requests that the following person be notified in the event of his death or disability:
Father: Mr. Gustav Ely, Rörvik, Grebbestad, Sweden.
(Name) (Address)

Additional data: Location of real and personal property, nature and place of investments, location of will, or estate. (It is optional with the applicant to give this information.)
XX

Registration (approved / disapproved) by the Department of State on (Date)

A certificate of registration issued to the applicant.

(Signature of consular officer)

Passport will be issued(1) after three months unless sooner withdrawn by the applicant or until further order.

REMARKS:

(Date)

limited. This passport is valid for two years from the date of issue unless limited to a shorted period. It is not subject to extension beyond a period of two years from the date of issue. This passport is limited to be valid for a period of six months only, and will expire on January 22, 1930. (Sgd.) H. C. von Struve, American Consul. (Seal of American Consulate.)

Page 6. Amendments and extensions. Nothing.

Page 7. Visas. (Red rubber stamp.) Up visat vid avresan dan 7 SEP. 1929. Polisen i Göteborg.

Pages 8–32. Visas. All blank.

Exhibit E

U. S. DEPARTMENT OF LABOR,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, December 24, 1936.

Address reply to Commissioner of Immigration and Naturalization and refer to File Number 23/22894 Inf.

Mr. CHARLES HENRY BUTLER, *Attorney,*
Investment Building, Washington, D. C.

DEAR SIR: In reply to your letter of December 22, 1936, relative to Marie Elizabeth Elg, you are informed that the records at the port of New York show that Marie Elizabeth Elg arrived at that port on the Steamship "Gripsholm" September 17, 1929, and was admitted as a United States citizen.

Cordially yours.

By direction of the Commissioner.

HENRY B. HAZARD, *Assistant.*

13

Exhibit F1

U. S. DEPARTMENT OF LABOR,
IMMIGRATION AND NATURALIZATION SERVICE,
New York, N. Y., April 8, 1935.

In replying please refer to this File Number 2–331860.

MARIE ELIZABETH ELG,
Chestnut Ridge Road, % George Butler, Mount Kisco, N. Y.

DEAR MADAM: Reference is made to your interview at this office on April 19, 1934, at which time you verified an affidavit setting forth all the facts regarding your birth, parents' citizenship and your residence in the United States and Sweden.

A subsequent investigation has been conducted in your case in connection with which your father was interviewed abroad. Your father made an affidavit to the effect that he voluntarily abandoned his permanent residence in the United States; that he had no desire to preserve his allegiance to the United States and intended and desired to preserve his allegiance to Sweden.

You are informed that the Department has concluded that your father became a Swedish subject on July 25, 1924, and since you were then residing in Sweden, you became a Swedish subject and forfeited all claims to American citizenship. The Department has directed that your entry on September 17, 1929, be not regarded as lawful for permanent residence for the reason that you were at that time an alien and were coming to this country for permanent residence and therefore you were subject to the quota laws then in effect and the requirements of the Immigration Act of 1924 requiring you to be in possession of a consular immigration visa. This office has been informed that it will be necessary for you to depart from the United States and thereafter effect an entry in compliance with the existing immigration laws. You are informed that the Service will afford you a reasonable opportunity and time to adjust your present unlawful status.

Will you kindly inform this office when it is your intention to depart from the United States?

The American passport and birth certificate which you left at this time at the time of your interview are returned herewith.

Very truly yours,

(S.) BYRON H. UHL,
Byron H. Uhl,
District Director.

14 *Exhibit F2*

U. S. DEPARTMENT OF LABOR,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, July 2, 1936.

Address reply to Commissioner of Immigration and Naturalization and Refer to File Number 23/22894 RV.

Mr. HENRY F. BUTLER.
Investment Building, Washington, D. C.

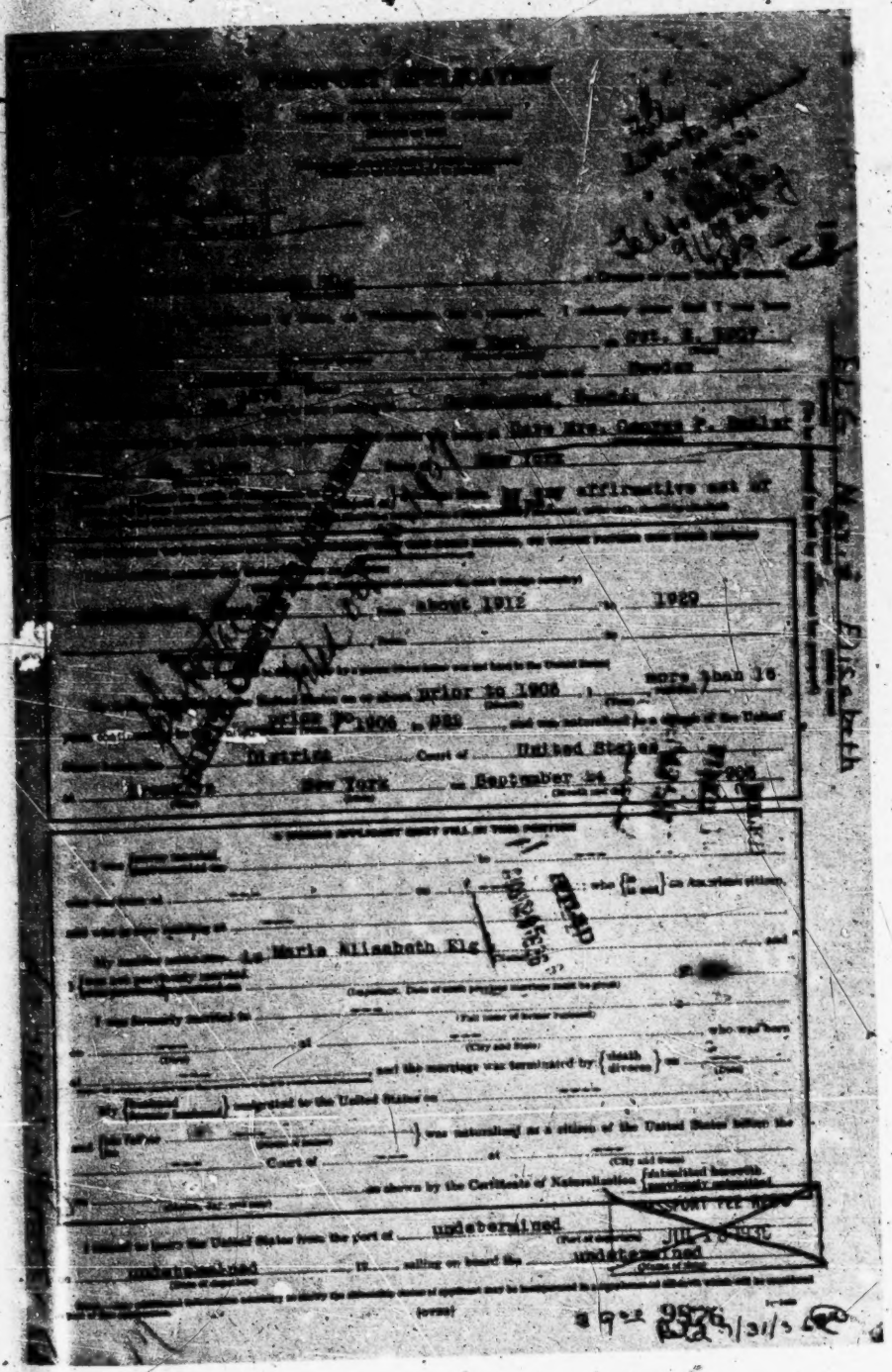
DEAR SIR: This office refers to your letter dated April 8, 1936, regarding the immigration status in the United States of Miss Marie Elizabeth Elg.

Miss Elg's case was made the subject of further consideration by this Service on the 10th ultimo, when it was noted that a period of approximately 60 days in which you might present proof of the subject's American citizenship had been given. In order that there may be sufficient time to present all evidence bearing upon the matter, a further period of 60 days from the date of this notice will be granted for the purpose of presenting proof relative to Miss Elg's American citizenship.

Cordially yours.

By direction of the Commissioner:

(Signed) J. H. WAGNER,
J. H. Wagner, *Assistant.*



Oct. 3, 1907

Mrs. Georgia P. Butler

I am affirmative out of

about 1912 to 1929

prior to 1908 more than 16

1908 1923

District Court of United States

New York September 24 1923

Maria Elisabeth Ely

undetermined

undetermined

JUL 10 1935

3922 9526 1/31/35

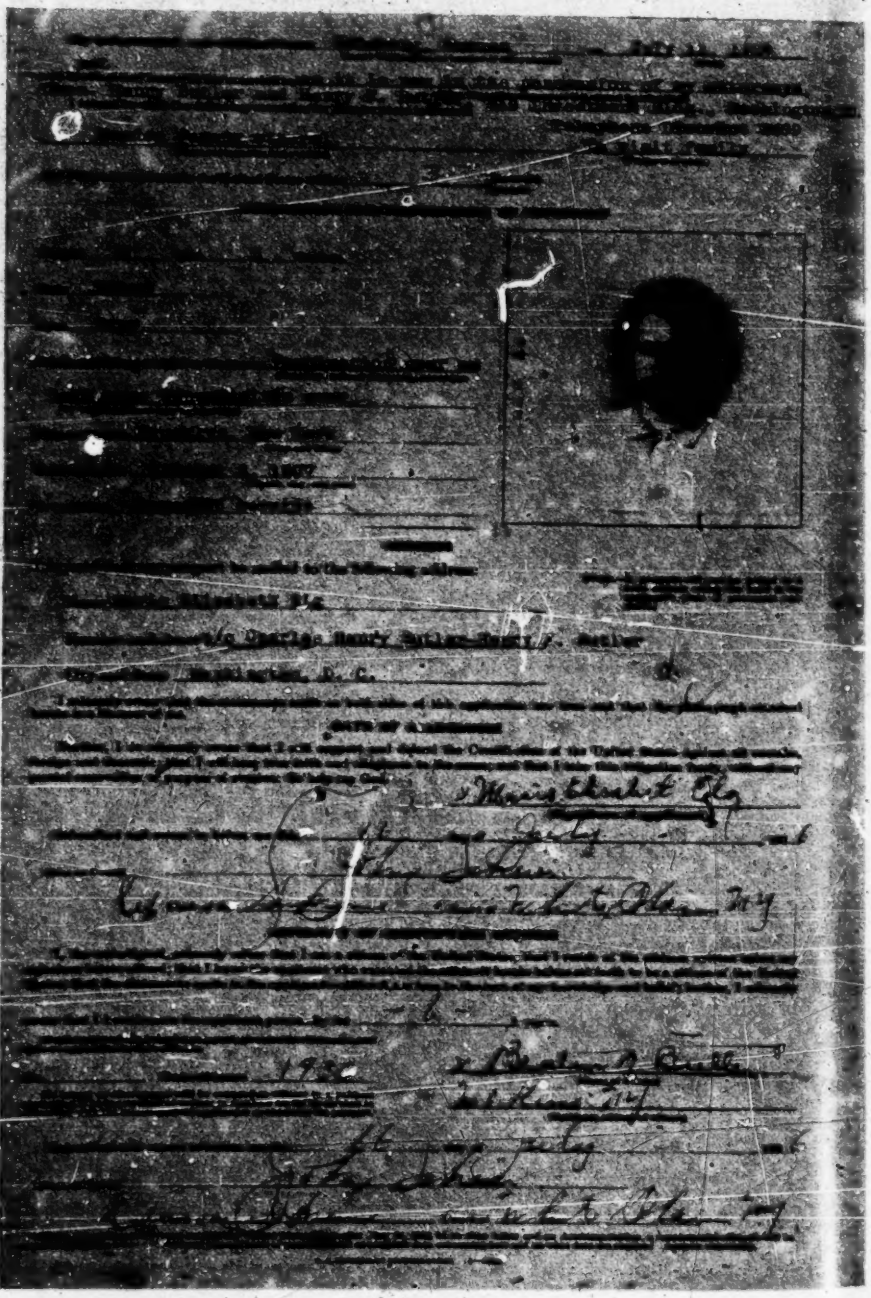


Exhibit F3

U. S. DEPARTMENT OF LABOR,
IMMIGRATION AND NATURALIZATION SERVICE,
October 16, 1936.

Address reply to Commissioner of Immigration and Naturalization and Refer to File Number 23/22894.

Mr. CHARLES HENRY BUTLER,
Attorney at Law, Investment Building, Washington, D. C.

DEAR SIR: In reply to your letter of October 14, 1936, relative to the case of Miss Marie Elizabeth Elg, you are informed that the District Director of this Service, Ellis Island, N. Y. H., is being instructed to take no steps looking to the enforced departure of Miss Elg prior to February 1, 1937.

Respectfully,
By direction of the Commissioner.

W. W. BROWN,
W. W. Brown, *Assistant.*

15 *Exhibit H1*

Address official communications to The Secretary of State Washington, D. C. (Seal of the United States.) In reply refer to 130–Elg, Marie Elisabeth.

DEPARTMENT OF STATE,
Washington, July 29, 1936.

MISS MARIE ELISABETH ELG,
Care of Mrs. Charles Henry Butler,
Investment Building, Washington, D. C.

MY DEAR MISS ELG: The Department has received the application for a passport which was executed by you before the Deputy Clerk of the Supreme Court at White Plains, New York, on July 16, 1936. It appears from that application and from the files of the Department that you were born in Brooklyn, New York, on October 2, 1907; that your father, Gustav Elg, who was born in Sweden, was naturalized as a citizen of the United States before the District Court of the United States at Brooklyn, New York, on September 24, 1906; that in 1911 your mother returned to Sweden taking you with her; that you remained in Sweden until September of 1929, and that your father returned to Sweden in July of 1922, where he has since continued to reside.

Your attention is invited to the first paragraph of Article V of the Swedish Nationality Law of October 1, 1894, as amended by the laws of April 27, 1906, and May 7, 1909, which reads as follows:

"Swedish citizenship is forfeited by anyone who becomes a citizen of another country."

In view of this provision of law your father, of course, ceased to be a Swedish citizen when he was naturalized in the United States on the date above mentioned, and consequently you did not acquire Swedish nationality at birth. Attention is also called to the second paragraph of Article VIII of the same law, which provides as follows:

"If the King has entered into a convention with a foreign Government, that any person previously of Swedish nationality having acquired citizenship in that foreign country shall be considered as having renounced such right when he again takes up his domicile in this country and after he has been living here for a certain time; if any person for such reason loses his foreign citizenship, he regains his Swedish citizenship at the same time."

Article III of the Protocol to the Convention between the United States and Sweden and Norway concerning naturalization, signed May 26, 1869, provides as follows:

"It is further agreed that if a Swede or Norwegian, who has become a naturalized citizen of the United States, renews his residence in Sweden or Norway without the intent to return to America, he shall be held by the Government of the United States to have renounced his American citizenship.

"The intent not to return to America may be held to exist when the person so naturalized resided more than two years in Sweden or Norway."

16 Obviously in view of the residence of your father in Sweden since July of 1922 without the intention of returning to the United States, the Department is required to hold that under the Article of the Protocol just mentioned he must be considered as having renounced his American citizenship, and his reacquisition of Swedish nationality under the provisions of the second paragraph of Article VIII above quoted of the Swedish law coincidently with his renunciation of American citizenship must be recognized under the Convention above referred to. As to your status, the third paragraph of Article VIII of the Swedish law above referred to provides that:

"If * * * Swedish right or citizenship has been regained by the husband and father, such right also accrues to his wife and legitimate children under age, unless * * * they neither are domiciled in this country when citizenship is regained by the husband and father, nor have lost their citizenship in the foreign country together with him."

Obviously, under this provision of Swedish law you acquired Swedish nationality coincidently with your father since you were then residing with him, and such acquisition must be recognized as having resulted in the loss of American citizenship under the provisions of the Naturalization Convention in effect between the United States and Sweden.

It may be added that, even in the absence of a convention concerning naturalization with Sweden, the Department would necessarily be obliged in the circumstances of your case to hold that under the provisions of the first paragraph of Section 2 of the Act of March 2, 1907, you lost your American citizenship by being naturalized in a foreign state in conformity with its laws. For your convenience this paragraph of law is quoted:

"That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

In view of the foregoing, the Department is obliged to say that, as you cannot be considered to be a national of the United States, a passport cannot be issued to you.

It may be added that some time subsequent to the issue of a passport to you on July 22, 1929, by the American Consul at Göteborg, Sweden, the Department of Labor communicated with this Department with regard to the preliminary form for declaration of intention to become a citizen of the United States filed by you, called attention to the fact that your father last returned to Sweden in July of 1922, where he had since remained, and requested that the appropriate consular office in Sweden ascertain whether your father had resumed Swedish nationality, and if so, the date of such resumption. On August 20, 1934, this Department communicated with the American Consul at Göteborg transmitting a copy of the letter of August 23, 1934, from the Department of Labor. With a despatch of November 17, 1934, from the consular office mentioned he transmitted an English translation of a communication of October 30, 1934, from the Swedish Ministry for Foreign Affairs to the American Legation at Stockholm, in which it

was held that your father recovered Swedish nationality by
17 resuming his residence in Sweden and remaining there for a
period of two years, and that if you were residing with him at the time you also acquired Swedish nationality under Swedish law. The Consul submitted a report of your father's expatriation in which the names of four of his children, including you, were mentioned as having acquired Swedish nationality with consequent loss of American nationality. The Consul also submitted a statement made by your father on November 13, 1934, reading as follows:

"I, Gustav Elg, now a resident of Grebbestad, Sweden, do hereby solemnly declare:

"That I have voluntarily expatriated myself for the reason that I did not desire to retain the status of an American citizen;

"That my permanent residence in the United States has been voluntarily abandoned and that I neither intend nor desire to resume permanent residence in the United States;

"That I have voluntarily surrendered my Certificate of Naturalization;

"And that I neither intend nor desire to preserve my allegiance to the United States, but intend and desire to preserve my allegiance to Sweden.

In the light of the information obtained from the Swedish authorities, the Department regrets to say that the passport issued to you on July 22, 1929, was issued in error. A copy of the Consul's despatch of November 17, 1934, and the enclosures thereto were forwarded to the Department of Labor on December 13, 1934.

Your attorney, Charles Henry Butler, has inquired whether this Department has advised the Department of Labor that your entry into the United States was illegal. In connection with such inquiry you are advised that supervision over the entry of aliens into the United States is a matter coming entirely within the scope of the duties of the Department of Labor and it is contrary to the usual practice of this Department to express an opinion whether an individual may be considered to have entered the United States illegally.

As of interest to you in connection with your case attention may be invited to the Opinion of the Attorney General of the United States in the case of Ingrid Therese Tobiassen (36 Op. Atty. Gen. 535) and to the decision of October 15, 1934, of the United States Circuit Court of Appeals for the Ninth Circuit in the case of the United States v. Reid (73 F. (2d) 153), both of which relate to the citizenship status of a minor American-born child whose father acquired the citizenship of a foreign country, which act also conferred upon his child then residing with him the citizenship of the same foreign country.

A check for the sum of $9.00, the amount which accompanied your application under acknowledgement, is enclosed.

Sincerely yours,

R. B. SHIPLEY,
R. B. Shipley,
Chief, Passport Division.

Enclosures: Check for $9.00; Copy of this letter.

18 *Exhibit H2*

DEPARTMENT OF STATE,
Washington, September 25, 1936.

Address Official Communications to The Secretary of State, Washington, D. C. (Seal of the United States.) In reply refer to 130-Elg, Marie Elisabeth.

MY DEAR MR. BUTLER: I have received your letter of September 18, 1936, referring to quotations from a statement made by Gustav Elg on November 13, 1934, in regard to his having voluntarily expatriated himself, contained in my letter of July 29, 1936, addressed to Marie Elisabeth Elg. You request that you be furnished with a

copy of the report of the American Consul at Goteborg and advised whether the naturalization certificate of Gustav Elg was surrendered at the time he made the above referred to statement concerning his voluntary expatriation. You also request, if it is permissible, that you be furnished with a copy of the Department's instruction under which the Consul acted in obtaining the declaration from Gustav Elg on November 13, 1934.

On August 23, 1934, the Department of Labor communicated with this Department with regard to the preliminary form for declaration of intention to become a citizen of the United States which was filed by Marie Elisabeth Elg. In its letter the Department of Labor asked that it be ascertained from the appropriate consular officer in Sweden whether Marie Elisabeth Elg's father, Gustav Elg, had resumed Swedish allegiance, and if so, the date of such resumption. Pursuant to this request the Department on August 30, 1934, communicated with the American Consul at Göteborg, transmitting a copy of the letter from the Department of Labor, and requested that he make an appropriate investigation in Miss Elg's case with a view to ascertaining whether her father reacquired Swedish nationality under the Swedish Law of October 1, 1894, upon his return to Sweden, and if so, whether his daughter, Marie Elisabeth Elg, who was born in the United States on October 2, 1907, and resided in Sweden with her father from 1922 to 1929, acquired Swedish nationality through her father's reacquisition of such nationality. The Consul was further instructed that if he should find that Gustav Elg and Marie Elisabeth Elg were naturalized in Sweden and consequently lost their American citizenship under the first paragraph of Section 2 of the Act of March 2, 1907, he should prepare and forward to the Department a report of expatriation.

It is contrary to the long standing policy of the Department to furnish individuals with copies of instructions to its diplomatic and consular officer concerning individuals. However, the instruction concerning Gustav Elg and Marie Elisabeth Elg is substantially as stated.

As was indicated by my letter to Miss Elg of July 29, 1936, the Consul on November 17, 1934, transmitted a report of Mr. Elg's expatriation in which the names of four of his children were mentioned as having acquired Swedish nationality with consequent loss of American nationality. A photostat of the report of expatriation is enclosed.

The files of the Department do not show when Gustav Elg surrendered the certificate of his naturalization. It would seem,
19 however, from the context of the statement of his voluntary expatriation, which was made by Mr. Elg on November 13, 1934, that the certificate of naturalization was forwarded to the Consul at the same time as was the statement.

A bill covering the cost of the photostat is enclosed. Payment may be made in currency or by a postal money order made payable to the Secretary of State, Washington, D. C.

Sincerely yours,

R. B. SHIPLEY,
R. B. Shipley,
Chief, Passport Division.

Enclosures: Photostat, bill.

Exhibit H3

REPORT OF EXPATRIATION OF GUSTAV EDWIN ELG

I, Robert Harnden, Consul of the United States of America at Göteborg, Sweden, hereby certify that Gustav Edwin Elg, who was born at Grebbestad, Sweden, on December 21, 1879, and who was naturalized as a citizen of the United States before the District Court of the United States for the Eastern District of New York at Brooklyn, New York, on September 24, 1906, has expatriated himself by resuming Swedish citizenship. The evidence of such action consists of the following:

Under Articles I and III, and Article III of the Protocol of the Naturalization Treaty between the United States and Sweden and Norway of May 26, 1869, a Swedish born naturalized American citizen may automatically resume Swedish citizenship after two years residence in Sweden. Mr. Elg arrived in Sweden on July 25, 1922, establishing a permanent residence in this country. Accordingly he resumed Swedish citizenship automatically on July 25, 1924, simultaneously losing his American citizenship under the provisions of the first paragraph of Section 2 of the Act of March 2, 1907.

Mr. Elg departed from the United States, where his last residence was in Brooklyn, N. Y., on July 15, 1922.

His wife, Evelyn Sofia Elg, born in Grebbestad, Sweden, on November 24, 1881, derived American citizenship through her marriage, and is now also a Swedish subject.

Children:

Marie Elizabeth, born in Brooklyn, N. Y., on October 2, 1907.
Helen Viola, born in Brooklyn, N. Y., on August 4, 1909.
Gustav Arnhold, born in Grebbestad, Sweden, on May 18, 1912.
Ruth Ingeborg, born in Grebbestad, Sweden, on March 27, 1915.

The address of Marie Elizabeth is 891 Park Ave., New York; Helen Viola is at present visiting in Grebbestad, Sweden, provided with permit to reenter the U. S.; the two youngest children are residing with their parents in Grebbestad, Sweden.

Since all the children were residing with their father in Sweden at the time he regained Swedish nationality, they acquired Swedish nationality at the same time, under the provisions of Article 8,

20 Par. 3, of the Swedish law of October 1, 1894, simultaneously losing their American citizenship under the provisions of the Act of March 2, 1907, above referred to.

The address of Mr. Elg is Grebbestad, Sweden.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal, this 17th day of November 1934.

[OFFICIAL SEAL]

ROBERT HARNDEN,
Robert Harnden,
Consul of the United States of America,
at Göteborg, Sweden.

KHL.

Exhibit H4

DEPARTMENT OF STATE,
Washington, September 26, 1936.

Address official communications to The Secretary of State, Washington, D. C. (Seal of the United States).

MY DEAR MR. BUTLER: In reply to your letter of September 25, I must say that I do not agree with you in your conclusion concerning Gustav Elg. In fact, it does not appear that paragraph 2 of Section 2 of the Act of March 2, 1907, has anything to do with the case of Gustav Elg or his daughter.

Sincerely yours,

R. B. SHIPLEY,
Ruth Shipley,
Chief, Passport Division.

MR. CHARLES HENRY BUTLER,
Investment Building, 15th and K Streets, Washington, D. C.

IN United States District Court

Rule to show cause

Filed January 14, 1937

* * * * * * * *

On reading and filing the annexed complaint and on motion of Henry F. Butler, attorney for plaintiff, it is

Ordered that the defendants and each of them show cause before this Court on January 26th, 1937, at ten o'clock in the forenoon of that day why an injunction as prayed for in the complaint during the pendency of this action should not be granted and let service of this order on the defendants on or before January 16th, 1937, be sufficient service thereof.

F. DICKINSON LETTS,
Justice, District Court of the United States
for the District of Columbia.

Marshal's return

Served a copy of the within above rule on within named defendants, Frances Perkins, By G. B. Reilly, Asst. Sol., Edward J. Shaughnessy, Acting Com., etc. Cordell Hull, By H. G. Hackworth, Sol., Personally, January 14, 1937.

JOHN B. COLPOYS,
U. S. Marshall in and for the Dist. of Columbia.
By HARRY C. AILEN,
Deputy U. S. Marshal.

In United States District Court

Return to rule to show cause

Filed January 25, 1937

* * * * * * *

Come now the above-named defendants in the above-entitled cause and for return to the rule to show cause issued therein, and expressly reserving the right to answer, move to dismiss, or otherwise plead to the bill of complaint filed herein, say:

1. That in respect to the defendant Cordell Hull no temporary injunctive relief is prayed and no purported grounds therefor are stated in the bill of complaint.

2. That in respect to the defendants Perkins and Shaughnessy no grounds for temporary injunctive relief are stated in said bill of complaint in that the only purported threat of deportation set forth is that contained in Exhibit F-3 attached to the bill of complaint in which the Commissioner notified plaintiff's counsel that the District Director of the Immigration Service at Ellis Island was being instructed to take no steps looking to the enforced deportation of plaintiff prior to February 1, 1937, there being no allegation that affirmative steps will be taken after February 1, 1937.

3. That in respect to the defendants Perkins and Shaughnessy, said defendants have no intention to enforce deportation proceedings pending the outcome of this case in this court.

4. That plaintiff's bill of complaint is multifarious and constitutes a misjoinder of causes of action in that the relief sought against defendant Cordell Hull relates to his refusal to issue a passport whereas the relief sought against the defendants Perkins and Shaughnessy relates to an anticipated deportation proceeding, the defenses to which are separate, and it is inconvenient to dispose of said causes together.

5. The plaintiff's bill of complaint is further multifarious and constitutes a misjoinder of causes of action in that he seeks a declara

tory judgment as well as an injunction, the rule permitting the joinder of a suit for a declaratory judgment with a principal cause of action being confined to an action at law, and plaintiff's action being an action in equity.

6. The bill of complaint shows on its face that as far as defendants Perkins and Shaughnessy are concerned, plaintiff has a plain, adequate, and complete remedy at law; namely, by habeas corpus if and when deportation proceedings are instituted.

7. The bill of complaint shows on its face that in respect to the defendant Cordell Hull this court will give no relief as prayed
22 for against him because the relief sought involves the exercise of judgment and discretion by said defendant.

For the foregoing reasons defendants pray that the rule to show cause issued herein be discharged and that the application for a temporary injunction be denied as to each and all of the defendants.

FRANCES PERKINS,
Secretary of Labor.
EDWARD J. SHAUGHNESSY,
Acting Commissioner of Immigration and Naturalization.
CORDELL HULL,
Secretary of State.

DISTRICT OF COLUMBIA, *ss:*

I, Edward J. Shaughnessy, being first duly sworn, declare and say that I have read the foregoing return to the rule to show cause issued in the above-entitled cause, and verily believe the facts stated therein to be true.

EDWARD J. SHAUGHNESSY,
Acting Commissioner of Immigration and Naturalization.

Subscribed and sworn to before me this 23d day of January, 1937.

[NOTARIAL SEAL] J. C. WATTS, *Notary Public.*

LESLIE C. GARNETT,
United States Attorney.
DAVID A. PINE,
Assistant United States Attorney,
Attorney for Defendants.

ALBERT E. REITZEL,
Assistant Solicitor of Labor.
R. W. FLOURNOY,
Solicitor to Legal Advisor, Department of State,
Of Counsel.

Received copy of the foregoing return to rule to show cause this 25th day of January 1937.

HENRY F. BUTLER,
Atty. for plaintiff.

In United States District Court

Order to discharge rule to show cause.

Filed January 26, 1937

* * * * * * *

The above entitled cause having come on to be heard and all parties being represented in court by their attorneys, upon statement by attorney for the defendants and as set forth in Paragraph 8 of the defendants' return to rule to show cause, that the defendants, Perkins and Shaughnessy, have no intention to enforce deportation proceedings pending the ontcome of this case in this court, it is—

Ordered that the rule to show cause is hereby discharged this 26th day of January 1937, but without prejudice to any other rights of the parties.

F. Dickinson Letts,
Justice District Court of the United States for the District of Columbia.

23 In United States District Court

Motion to dismiss bill of complaint

Filed February 4, 1937

* * * * * * *

Come now the above named defendants, and each of them, by their attorneys below named, and move to dismiss the bill of complaint filed in the above entitled cause, on the following grounds:

1. Plaintiff's bill of compluint is multifarious and constitutes a misjoinder of causes of action in that the relief sought against defendant Cordell Hull relates to his refusal to issue a passport and to the alleged making of statements by said defendant to public officials and others to the effect that plaintiff is not a citizen of the United States, whereas the relief sought against the defendants Perkins and Shaughnessy relates to an alleged anticipated deportation proceeding against plaintiff; the defenses to which said causes of action are separate and sufficient grounds do not appear for uniting the same in order to promote the convenient administration of justice.

2. The plaintiff's bill of complaint further constitutes a misjoinder of causes of action in that she seeks a declaratory judgment as well as an injunction, the rule permitting a joinder of an application for a declaratory judgment with a principal cause of action being confined to an action at law and the plaintiff's action being an action in equity.

8. The bill of complaint discloses on its face that so far as defendants Perkins and Shaughnessy are concerned plaintiff has a plain, adequate, and complete remedy at law; namely, by habeas corpus if and when deportation proceedings are instituted.

4. The bill of complaint shows on its face that in respect of the defendant Cordell Hull, this court is not empowered to give the relief prayed for against him because the relief sought involves the exercise of judgment and discretion by said defendant Cordell Hull in matters committed to his care as Secretary of State, in that the bill of complaint seeks to enjoin him from refusing to issue plaintiff a passport and from making statements to public officials and others that plaintiff is not a citizen of the United States.

5. The bill of complaint shows on its face that in respect of the defendants Perkins and Shaughnessy there is no actual controversy within the meaning of the Declaratory Judgments Law or within the meaning of Clause 1, Section 2, Article III of the Constitution.

6. The bill of complaint shows on its face that in respect of the defendants Perkins and Shaughnessy, if there is an actual controversy within the meaning of said law and said clause of the Constitution, it is not one in which this court will grant a declaratory judgment, inasmuch as this is forbidden by statutory and substantive law, and this is not a case within this court's jurisdiction.

7. The bill of complaint shows on its face that in respect of the defendant Cordell Hull, while there may be an actual controversy within the meaning of said law and said clause of the Constitution in the refusal by defendant Cordell Hull to issue a passport, it is not one in which the courts will grant a declaratory judgment, in-
24 asmuch as the substantive law forbids interference by the judiciary in matters involving the exercise of judgment and discretion by the executive branch of the Government, and the said Declaratory Judgments Law in the instance is coterminus in its scope with the remedy provided by injunction or mandamus.

8. The bill of complaint shows on its face that in respect of defendant Cordell Hull, there is no actual controversy within the meaning of said Declaratory Judgments Law or said clause of the Constitution in relation to the making of statements by said defendant in the course of his official duties in respect of plaintiff's citizenship, but only a difference of opinion between the plaintiff and defendant Cordell Hull.

9. The plaintiff is not a citizen of the United States by virtue of Article III of the Protocol to the Convention between the United States and Sweden and Norway, proclaimed January 12, 1872 (17 Stat. 809–810), and by virtue of Paragraph 1 of Article V, and Article VIII of the Swedish Nationality Law of October 1, 1894, as amended by the laws of April 27, 1906, and May 7, 1909, set forth in Exhibit

H-1 to the plaintiff's bill of complaint, and by virtue of Section 2 of the Act of March 2, 1907, Title 8, U. S. C., Sec. 17.

And for other reasons apparent of record.

LESLIE C. GARNETT,
United States Attorney.

DAVID A. PINE,
Assistant United States Attorney,
Attorneys for Defendants.

BART W. BUTLER,
Attorney, Department of Justice.
ALBERT E. REITZEL,
Assistant Solicitor of Labor.
R. W. FLOURNOY,
Assistant to Legal Adviser, Department of State,
Of counsel.

In United States District Court

Stipulation with respect to the laws of Norway

Filed June 12, 1937

* * * * * * * * *

It is hereby stipulated by and between the parties hereto, by their attorneys, that upon the hearing of this motion, whether the same be on motion to dismiss or upon final hearing, the court may take judicial notice of the statutes of Norway; accepting as correct translations without further proof the English translations as they appear in U. S. House Documents, Volume 72, No. 326, 59th Congress, Second Session, 1907, and in Nationality Laws, Flournoy and Hudson, and in any regularly printed compilation of said laws or portions of them intended for use by Norwegian Legations or Consulates; and either party may refer to such statutes in oral or written arguments without making proof thereof. Each party reserves the right in the
25 event of a final hearing of the cause on evidence, to produce expert witnesses to prove such foreign laws if he shall be so advised.

LESLIE C. GARNETT,
United States Attorney.
DAVID A. PINE,
Assistant United States Attorney,
Attorneys for Defendants.
HARRY F. BUTLER,
Attorney for Plaintiff.

In United States District Court

Stipulation with respect to the laws of Sweden

Filed June 12, 1937

* * * * * * *

It is hereby stipulated by and between the parties hereto, by their attorneys, that upon the hearing of this cause, whether the same be on motion to dismiss or upon final hearing, the court may take judicial notice of the statutes of Sweden as the same appear in the English translation in two certain books entitled "Consular Statute Book of Sweden" dated 1910, and "Statute Book for Legations and Consulates" dated 1931, and either party may refer to such statutes in oral or written arguments without making proof thereof. Each party reserves the right in the event of a final hearing of the cause on evidence, to produce expert witnesses to prove such foreign laws if he shall be so advised.

LESLIE C. GARNETT,
United States Attorney.
DAVID A. PINE,
Assistant United States Attorney,
Attorneys for Defendants.
HENRY F. BUTLER,
Attorney for Plaintiff.

In United States District Court

Opinion of Mr. Justice Bailey

Filed November 1, 1937

* * * * * * *

The motion to dismiss will be sustained as to the defendant, Hull, for the reason that the Court will not undertake by mandamus to compel the issuance of a passport, nor to control by means of a declaratory judgment the action of one whose function it is to consider and decide whether or not a passport should issue.

According to the allegations of the bill, the Department of Labor has notified the plaintiff that she is illegally within the United States and has required her to leave the United States, and in case of her not doing, she would be deported as an alien. Her only resource would be to submit to arrest and then seek the issuance of a writ of habeas corpus. I think that this belongs to a class of cases for
26 which a declaratory judgment is eminently suited. It is immaterial whether the Court could enjoin the action of the Department of Labor "where there is such a concrete case admitting

of an immediate and definite determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages." Aetna Life Ins. Co. v. Haworth, U. S. Sup. Ct. (March 1, 1937).

The bill alleges that she was born in the United States, was taken during her minority by her parents to Sweden. Within a year after her attaining her majority and without having renounced her allegiance to this country, she came to this country. I do not think that the fact that her father may have become a citizen of Sweden, can deprive her of her rights as a native-born citizen of the United States, even though under the laws of Sweden she may be treated in that country as a citizen of it.

The motion to dismiss will therefore be sustained as to the defendant, Hull; in other respects overruled.

BAILEY, *J.*

In United States District Court

Final decree

Filed November 18, 1937

* * * * * * *

This cause came on to be heard at this term; and, thereupon, upon consideration thereof, it is by the Court this 18th day of November, 1937,

Adjudged, ordered, and decreed that the motion to dismiss filed herein be, and the same hereby is, sustained as to defendant Cordell Hull, Secretary of State, and, the plaintiff electing not to amend, the bill of complaint, filed herein be, and the same hereby is, dismissed as to defendant Cordell Hull; and it is further

Adjudged, ordered, and decreed that the motion to dismiss filed herein be, and the same hereby is, overruled as to defendants Frances Perkins, Secretary of Labor, and Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization; and, said defendants Perkins and Shaughnessy electing to stand upon their motion to dismiss as filed herein, that the said plaintiff Marie Elizabeth Elg be, and she hereby is, declared to be a natural born citizen of the United States.

JENNINGS BAILEY, *Justice.*

OK as to form:

HENRY F. BUTLER,
Atty. for Plaintiff.

DAVID A. PIKE,
Asst. U. S. Atty., Atty. for Defendants.

From the foregoing decree sustaining the motion to dismiss of defendant Cordell Hull, Secretary of State, and dismissing the bill of

complaint as to said defendant Cordell Hull, Secretary of
27 State, the plaintiff, by her attorney in open court, notes an appeal to the United States Court of Appeals for the District of Columbia; whereupon, the undertaking for costs is fixed in the sum of $100.00 with leave to deposit the sum of $50.00 with the clerk in lieu thereof.

From the foregoing decree overruling the motion to dismiss of defendants Frances Perkins, Secretary of Labor, and Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization, and declaring the plaintiff Marie Elizabeth Elg to be a citizen of the United States, said defendants Frances Perkins, Secretary of Labor, and Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization, by their attorneys in open court, note an appeal to the United States Court of Appeals for the District of Columbia.

November 18th, 1937.

JENNINGS BAILEY, *Justice.*

In United States District Court

Assignment of errors

Filed December 2, 1937

* * * * * * *

The Court erred—

1. In overruling the motion to dismiss as to defendants Frances Perkins, Secretary of Labor, and Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization.

2. In entering a declaratory decree that the plaintiff Marie Elizabeth Elg is a natural-born citizen of the United States.

3. In refusing to sustain the motion to dismiss as to said defendants Perkins and Shaughnessy.

4. In not dismissing the bill of complaint as to defendants Perkins and Shaughnessy.

5. In not holding that plaintiff's bill of complaint was multifarious and constituted a misjoinder of causes of action.

6. In not holding that plaintiff has a plain, adequate and complete remedy at law as to defendants Perkins and Shaughnessy.

7. In holding that the Declaratory Judgments Law could be invoked in this case.

8. In not holding that there was no actual controversy within the meaning of the Declaratory Judgments Law or within the meaning of Clause 1, Section 2, Article III of the Constitution as to defendants Perkins and Shaughnessy.

9. In holding that the District Court of the United States for the District of Columbia had jurisdiction to enter a declaratory decree as to plaintiff's citizenship.

10. In refusing to hold that this is not a case within the jurisdiction of the District Court of the United States for the District of Columbia.

11. In refusing to hold that plaintiff is not a citizen of the United States by virtue of Article III of the Protocol to the Convention between the United States and Norway and Sweden proclaimed January 12, 1872, and by virtue of the Swedish Nationality Law of 1894 as amended, and by virtue of Section 2 of the Act of March 2, 1907, Title 8 U. S. C., Section 17.

28 12. In holding that plaintiff is a natural born citizen of the United States under facts stated in Bill of Complaint.

13. In other respects apparent of record.

LESLIE C. GARNETT,
United States Attorney,
DAVID A. PINE,
Assistant United States Attorney,
Attorneys for Perkins and Shaughnessy.

Service of the foregoing Assignment of Errors acknowledged this 2 day of Dec. 1937.

HENRY F. BUTLER,
Attorney for Marie Elizabeth Elg.

Memorandum December 3, 1937. Bond ($100) on appeal of Henry F. Butler approved and filed.

In United States District Court

Plaintiff's assignment of errors

Filed December 3, 1937

* * * * * * *

The Court erred—

1. In sustaining the motion to dismiss as to defendant Cordell Hull, Secretary of State.

2. In dismissing the bill of complaint as to defendant Cordell Hull.

3. In other respects apparent of record.

HENRY F. BUTLER,
Attorney for Marie Elizabeth Elg.

Service of the foregoing Assignment of Errors acknowledged this 2nd day of December 1937.

LESLIE C. GARNETT,
DAVID A. PINE,
Attorneys for Defendants.

In United States District Court

Docket entries

* * * * * *

1937

Jan. 14—Bill, appearance, order to file & exhibits (8) filed.
" "—Rule returnable Jan. 26/37. Ret. served all. Letts, J.
" "—Spa. to ans. & copies (3) issued. Ret. Served.
" 25—Return to rule to show cause—App. U. S. Atty.
" 26—Order discharging rule without prejudice. Letts, J.
Feb. 4—P. & A. of plff. in opp. to mo. to dismiss.
" "—Mo. of defts. to dismiss bill—App. Butler.
June 12—Stipulations (2).
" "—Reply to motion to dismiss.
Oct. 25—Motion to dismiss Bill argued & submitted. (Bailey, J.).
Nov. 1—Filed memorandum opinion of Court sustaining motion to dismiss as to Deft. Hull and overruling in other respects; order to be entered. (Bailey, J.).
" Nov. 18—Final decree sustained motion to dismiss as to deft Cordell Hull; overruling as to defts (1) & (2); appeal of plff; undertaking $100 or $50; appeal of defts. (Bailey, J.)
Dec. 3—Designation of Record.
" "—Assignment of Errors.
" "—Bond ($100) on appeal of Henry F. Butler with Glens Fall Indemnity Co., surety, app'd & filed.
" "—Plff's Assignment of Errors Filed.

In United States District Court

Designation of record

Filed December 2, 1937

* * * * * *

Now come Frances Perkins, Secretary of Labor, and Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization, and designate the parts of the record which they desire to have included in the transcript, said parts being considered sufficient for the determination of the question raised on appeal, namely:

1. Bill of complaint with exhibits.
2. Order to show cause why an injunction pendente lite should not be granted.
3. Return to rule to show cause why an injunction should not be granted.
4. Order discharging rule to show cause.
5. Stipulation with respect to the laws of Norway.

6. Stipulation with respect to the laws of Sweden.
7. Motion to dismiss bill of complaint.
8. Opinion of Mr. Justice Bailey filed November 1, 1937.
9. Final decree, with notation of appeals.
10. Docket Entries.
11. This designation.
12. Assignment of Errors.

LESLIE C. GARNETT,
United States Attorney,
DAVID A. PINE,
Assistant United States Attorney,
Attorneys for Perkins and Shaughnessy.

Service of the foregoing Designation of Record acknowledged this — day of Dec. 1937.

HENRY F. BUTLER,
Attorney for Marie Elizabeth Elg.

[Clerk's certificate to foregoing transcript omitted in printing.]

31 In United States Court of Appeals for the District of Columbia

[Titles omitted.]

Minute entry of argument

June 14, 1938

The argument in the above entitled causes was commenced by Mr. Henry F. Butler, attorney for Marie Elizabeth Elg, and was continued by Mr. David A. Pine, attorney for Frances Perkins, Secretary of Labor; Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization; and Cordell Hull, Secretary of State, and was concluded by Mr. Henry F. Butler, attorney for Marie Elizabeth Elg.

* * * * * * *

32 In United States Court of Appeals for the District of Columbia

Nos. 7096 and 7097

FRANCES PERKINS, SECRETARY OF LABOR, AND EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION, APPELLANTS

v.

MARIE ELIZABETH E. G, APPELLEE

MARIE ELIZABETH ELG, APPELLANT

v.

FRANCES PERKINS, SECRETARY OF LABOR; EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION; AND CORDELL HULL, SECRETARY OF STATE, APPELLEES

Appeal and Cross-Appeal from the District Court of the United States for the District of Columbia

Argued June 14, 1938—Decided August 1, 1938

David A. Pine, United States Attorney, and John H. Mitchell, Assistant United States Attorney, both of Washington, D. C., for appellants in No. 7096 and appellees in No. 7097.

Henry F. Butler, of Washington, D. C., for appellee in No. 7096 and appellant in No. 7097.

Before GRONER, C. J., and MILLER and VINSON, JJ.

Opinion

GRONER, C. J.: The main question in this case is whether appellee, a natural born citizen of the United States, has lost her citizenship involuntarily and by operation of law, by reason of her removal from the United States by her parents in her infancy and her residence in a foreign country until she was 21 years of age.

A secondary question is whether the suit is properly brought under the Declaratory Judgment Act (28 U. S. C. A. 400).

The facts are these: Marie Elizabeth Elg was born October 2, 1907, in the city and state of New York, and at the time of bringing this suit was and now is a resident of Mt. Kisco, Westchester County, New York. Some years prior to her birth her parents emigrated from Sweden to the United States, and in September 1906, her father was naturalized in New York. In 1911, when four years of age, Miss Elg was taken by her mother to Sweden, where she resided until she was 21 years of age. Her father remained in the United States until 1922, at which time he too returned to Sweden, where he has lived ever since. Shortly before she attained her
33 majority Miss Elg inquired of an American consul in Sweden what steps she shoud take when she reached legal age to return to the United States as an American citizen. As the result of this inquiry the Secretary of State of the United States issued instructions to the consul at Göteborg in Sweden to furnish Miss Elg an American citizen's passport, and in 1929 when 21 years of age, Miss Elg returned to the United States and was admitted at the port of New York as a natural born citizen of the United States. In April 1934—because investigation of her father's status by American consular officials developed the fact that he had no intention of returning to the United States and was willing to surrender his naturalization certificate—Miss Elg was examined by the immigration service in New York; and in April 1935 she was notified that she was an alien illegally in the United States, and was ordered to leave the country and threatened with deportation if she did not. As the result of her protest, the Secretary of Labor and the Commissioner of Immigration, as a matter of grace, suspended action temporarily,

but all the while insisting upon the validity of the holding that she was an alien illegally in the United States and all the while threatening to have her deported. In July 1936 Miss Elg applied to the Secretary of State for an American passport, which the Secretary refused on the ground that, because of the residence of her father in Sweden since 1922 without the intention of returning to the United States, the Department considered that he had renounced his American citizenship and reacquired Swedish nationality, and that because of her residence with her father she too had lost the one and acquired the other.

In January 1937 Miss Elg brought her suit in the United States District Court in the District of Columbia against the Secretary of Labor, the Commissioner of Immigration, and the Secretary of State. She prayed for a judgment declaring that she is a natural born citizen of the United States and entitled to all the rights and privileges of a citizen; and she prayed further that the Secretary of Labor and the Commissioner of Immigration be enjoined from carrying out the threat to deport her from the United States or from interfering with her residence therein; that the Secretary of State be enjoined from officially holding her not to be a citizen of the United States and refusing to issue her a passport; and for general relief. A show cause order was issued, and the case was heard on the return thereto and on a motion to dismiss the bill. The court held that plaintiff had not lost her American citizenship by her residence abroad during her minority; that when she elected to return and did return to the United States immediately after her emancipation she was entitled to be treated as a citizen of the United States; and that the deportation proceedings begun against her and suspended only by her suit, presented an actual controversy entitling her to a declaratory judgment. The court dismissed the bill as to the Secretary of State on the ground that the issuance of a passport involved discretion, but refused to dismiss as to the Secretary of Labor and the Commissioner of Immigration. All parties elected to stand on their pleadings, and the present cross appeals were duly effected.

We think the decision of the lower court is in all respects correct.

The law of England, as of the time of the Declaration of Independence, was that a person born in that kingdom owed to
34 the sovereign allegiance which could not be renounced. Many early American decisions applied that as the common law in this country. All agreed that every free person born within the limits and the allegiance of a State of the United States was a natural born citizen of the State and of the United States. And this was undoubtedly the view of Mr. Justice Curtis in his dissenting opinion in the Dred Scott case (19 How. 393, 581), in which he said:

"* * * we find that the Constitution has recognized the general principle of public law, that allegiance and citizenship depend upon the place of birth."

This doctrine of citizenship by reason of place of birth is spoken of by the writers on the subject as the jus soli or common law doctrine. The Roman rule is different and is in effect in many of the continental European countries. This is called the jus sanguinis and depends upon the nationality of the parents and not upon the place of birth. Professor Bluntschild, in speaking of the latter doctrine, said:

"The bond of the family lies at the foundation of national and political life, and attaches the child to the people among whom he is born. The opinion that fixes upon the locality of nativity, instead of the personal tie of the family, as the cause of nationality, abases the person to be a dependence of the soil."[1]

But this was not the common law.[2] United States v. Wong Kim Ark, 169 U. S. 649. When the Constitution was adopted the people of the United States were the citizens of the several States for whom and for whose posterity the government was established. Each of them was a citizen of the United States at the adoption of the Constitution, and all free persons thereafter born within one of the several States became by birth citizens of the State and of the United States.[3]

The first attempt by Congress to define citizenship was in 1866 in the passage of the Civil Rights Act (R. S. 1992). The act provided that:

"All persons born in the United States and not subject to any foreign power are declared to be citizens of the United States."

And this in turn was followed in 1868 by the adoption of the Fourteenth Amendment, declaring:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

As a result of the adoption of the amendment, whatever differences existed between statesmen and jurists on the general subject prior to the War Between the States was put to rest, and it may now be stated as an established rule that every person born within the United States (except in the case of children of ambassadors, etc.), whether born of parents who are themselves citizens of the United States or of foreign parents, is a citizen of the United States. In the Wong Kim Ark case, supra, the whole question of citizenship is traced from its source and the subject is so elaborately considered as to make unnecessary any further reference to this phase of the ques-

[1] Article 2, Rev. de droit Int. & leg. Compale. See also Dr. Arnolds' (or Rugby) Mis. writings, art. Christian policies, p. 465; 1 Gibbon 45—2 Ibid. 158.

[2] Both England and the United States (Act of 25 Ed. III Stat. 2, passed in 1350, and Act of April 14, 1802, R. S. 1993) under some circumstances recognized citizenship on the part of children of subjects or citizens born out of the jurisdiction of the respective countries.

[3] Mr. Calhoun in his published work upon the Constitution denied that there was any citizenship of the United States in any other sense than as being connected with the government through the States.

tion. But see generally on the subject: McCreary v. Somerville, 9 Wheat. 354; Re: Look Tin Sing, 21 F. 905; Ex parte Chin King, 35 F. 354; Gee Fook, 49 F. 146; Lynch v. Clark (N. Y.), 1 Sands Ch. 583; Opinion of Attorney General Black in 1859 (9 Op. 373); of Attorney General Bates in 1862 (10 Op. 394).

And this brings us to the second branch of the question, that is, whether appellee through the act of her parents has lost the rights of citizenship which she acquired at her birth. The question is not new. In circumstances such as these Attorneys General have for nearly a hundred years, and almost unanimously, answered it in the negative; and their views are supported by the decisions of many courts.

In this case it is agreed that appellee has done no act of her own showing an intention to surrender or forfeit her rights as a citizen of the United States. To the contrary, it is recognized that immediately upon her emancipation, she asserted them, and after the recognition of them by the United States returned to this country. If, in spite of this, she has lot those rights, it must be because she became by operation of Swedish law a naturalized citizen of Sweden upon her father's repatriation there, and in consequence ceased, also by operation of law, to be a natural born American citizen.

We think there is a conclusive answer to this proposition.

The Swedish law, it is agreed by both sides, is found in paragraph 3 of Article VIII of the Citizenship Act of Sweden of 1894. The parties, however, differ in the translation of the paragraph. Appellee insists that, rendered in English, it reads as follows:

"If Swedish citizenship is recovered by a * * * father Swedish citizenship shall also accrue to his * * * children who are under age, unless * * * they are not resident in Sweden at the time when the * * * father recovers Swedish citizenship or have not lost along with him citizenship in the foreign country."

As rendered by appellants, it reads:

"If * * * Swedish right of citizenship has been regained by the * * * father, such right also accrues to his * * * children under age, unless * * * they neither are domiciled in this country when citizenship is regained by the * * * father, nor have lost their citizenship in the foreign country together with him."

The parties likewise differ as to the interpretation of the paragraph. Appellee insists it means that two conditions must concur to confer Swedish citizenship on the infant—the infant must be with his father and the law of the country of his birth must have expatriated him upon his father's resumption of Swedish citizenship. Appellants insist that the conditions in the paragraph must be read in the alternative and, so read, must be taken to confer Swedish citizenship on the infant either in the event of his being in Sweden or in the event of his losing his citizenship upon his father's repatriation. Relying upon this latter reading of the paragraph, appellants say that by virtue of the express terms of Section 2 of the Act of

March 2, 1907 (8 U. S. C. A. 17)—which provides that any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws—appellee was at no time after two years from the date of her father's return to Sweden a citizen of the United States. But in the view we take of the main question, it is not necessary to determine the meaning or effect of the Swedish statute. For even granting the interpretation insisted on by appellants, we think the argument based upon it goes too far. If we concede that under Swedish law appellee became a naturalized Swedish citizen during her minority residence in that country, we should have only what is well known in international law as double citizenship, and whatever effect that status might have on appellee's right to call on the United States for protection[4] while she remained abroad, it would not affect her right of election when she reached her majority to claim and resume her American citizenship and return to the United States. Or, stated differently, even if we assume that a naturalized American citizen by abandoning his residence in this country and by returning to the country of his birth animo manendi, ceases to be a citizen of the United States and that his minor child born in the United States partakes during his legal infancy of his father's restored nationality, such child nevertheless, upon becoming sui juris, has the right to elect to retain his American citizenship—and such election, which is best evidenced by a return to the United States, restores his original status as a citizen of the United States. This was the view expressed by Secretary Bayard in a letter to Mr. Liebermann on July 9, 1886,[5] and grows out of the well recognized doctrine that expatriation is a matter of intent on the part of the person concerned, which intent must be shown by some express act or some other act from which it can be gathered.[6]

The record in this case is wholly lacking in any showing of intent, actual or presumptive, on the part of appellee at any time to abandon American citizenship and, lacking such showing, what was said by Attorney General Pierrepont in Steinkauler's Case (15 Op. 15) is true here, that:

"There is no law of the United States under which his father or any other person can deprive him of his birthright. He can return to America at the age of twenty-one, and in due time, if the people elect, he can become President of the United States * * *."

Like opinions were expressed by Secretary Olney on May 29, 1896, in a letter to Mr. Materne, by Secretary Frelinghuysen in 1882, and by Mr. Blaine in 1892. These and many other instances of the application of the rule to a state of facts like those in the present case are to be found in Moore's Digest of International Law, Vol. 3, p. 582,

[4] Much confusion has resulted from the failure to distinguish between cases involving the question whether a citizen is entitled to protection abroad and cases involving per se the question of citizenship.
[5] Moore's Digest of International Law, p. 542.
[6] Van Dyne, Citizenship of the U. S. (1904), p. 275.

et sequel. And the rule is summarized in the statement of Mr. Uhl, acting Secretary of State, in a letter to Mr. Rudolph of May 22, 1885, as follows:

"* * * no principle is better settled than that birth in the United States, irrespective of the nationality of the parents, confers American citizenship. The right of election of nationality, which it is generally conceded a person born under such circumstances has, cannot be exercised until he attains his majority. The father cannot by any act of his alter the status conferred upon the son by his birth in this country."

This was also the conclusion of Judge Hough in United States v. Husband, 6 F. 2d 957, where, quoting from Secretary Bayard, he said:

"It has been repeatedly held by us that, when a person born in the United States arrives at 21 in a foreign country, the mode of
37 expressing his election to be a citizen of the United States is by promptly returning to the United States. * * * That is what is called double allegiance, and by the law of nations the nationality of such persons is to be determined by their own election of nationality at their maturity, which election is evidenced by placing themselves in the country they elect."

See also to the same effect, United States v. Com. of Immigration, 28 F. 2d 44; State, ex rel. Phelps v. Jackson, 79 Vt. 504, 65 A. 657. This result necessarily follows from the fundamental rule that a natural born citizen of the United States retains his citizenship until he changes it himself in due form and voluntarily becomes a citizen of some other country. Morse, Citizenship by Birth, etc., p. 230. The change can neither be worked by the father nor by the sovereignty into which the child involuntarily is taken, for under the English and American doctrine the child himself acquires rights and owes fealty besides that which attaches to the father. Wong Kim Ark case, p. 691. In the instant case neither the Act of March 2, 1907, nor any other statute has taken away or diminished those rights, and it is doubtful, indeed, if there is any power in Congress—in view of the provisions of the Fourteenth Amendment—to take them away. On this subject the Supreme Court in the Wong Kim Ark case said, p. 703:

"Congress having no power to abridge the rights conferred by the Constitution upon those who have become naturalized citizens by virtue of acts of Congress, a fortiori no act or omission of Congress, as to providing for the naturalization of parents or children of a particular race, can affect citizenship acquired as a birthright, by virtue of the Constitution itself, without any aid of legislation. The Fourteenth Amendment, while it leaves the power, where it was before, in Congress, to regulate naturalization, has conferred no au-

thority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship."

We are, therefore, of opinion that when in 1929, upon a full disclosure of all the facts set out herein—as the bill declares was the case—the State Department of the United States issued to appellee a passport to return to the United States as an American citizen, it acted properly and in accordance with the law. In our opinion appellee is a natural born American citizen whose right to all the privileges of citizenship—whether or not, as far as concerns diplomatic protection, it be considered as suspended during her minority and sojourn in a foreign country—was in full effect when on her majority she applied for and received her passport. We are, therefore, of opinion that she was properly admitted into this country and, as the lower court held, is entitled now to be free of molestation.

We have carefully examined the opinion of the Attorney General in Tobiassen's case, 36 Op. 535,[1] and the case of United States v. Reid, 73 F. 2d 153[2] (certiorari denied on the sole ground that the petition was not filed in time, 299 U. S. 544), upon which appellants rely; and we think that the arguments they make out are not supported
38 by the statute on which they are mainly built,[3] and likewise that the conclusions reached are opposed to the established rules and principles which, it seems to us, not only should apply but since the adoption of the Constitution have been applied.

And this brings us to the final question in the case, namely, whether the Declaratory Judgment Act is applicable.

The trial court, as we have seen, concluded that the case was properly brought within the declaratory judgment statute. We are of the same opinion.

There can be no doubt that the lower court had jurisdiction of the several defendants and that it has jurisdiction of the subject matter of the suit. There is no other proceeding at law by which appellee could obtain an adjudication that she is a United States citizen—certainly none by which she can obtain that adjudication without being subject to arrest and confinement until her case may be heard on a petition of habeas corpus. Appellants, Secretary of Labor and Commissioner of Immigration, are required by law to deport aliens illegally in this country and in accordance with law they have threat-

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[1] The opinion assumes, directly in the teeth of established principles of international law, that the involuntary acquisition of alien citizenship by an American child divests and destroys his native citizenship. In this respect it overlooks the principle of double citizenship (Moore, Vol. 3, p. 518) and the right of election at majority (Moore, p. 541) and also Boyd v. Thayer, 143 U. S. 135, 178, and it is not supported by any language to be found in the Act of 1907, for that statute by its plain terms contemplates the personal abandonment of allegiance effected by personal acts. It is universally recognized that an infant cannot change his domicile, Lamar v. Micou, 112 U. S. 452, 470, for in such a matter he has no will of his own; and, as the basis of expatriation is deliberate intention, that quality is wholly lacking where the act is the result of constraint.

[2] See the opinion of Judge Fee in this same case in the District Court, 6 F. Supp. 800.

[3] 8 U. S. C. A. 17 (presumption statute).

ened her with arrest and deportation. The threat remains unretracted and is in abeyance only by agreement of counsel pending the decision of the case. She has not yet been arrested, and therefore she cannot now test by habeas corpus the question raised here; but she is entitled to a declaration of her political status, for her rights as a citizen are valuable rights—certainly no less valuable than property rights—and an actual and vital controversy exists between her and the government in relation to them. The right to be immune from threats of deportation and from the declarations of public officials that she is an alien and subject to arrest is, we think, a right within the declaratory judgment act entitling Miss Elg to prosecute this suit. If she is deported as an alien, her return at all to the United States will be possible only under very difficult conditions. And if the Secretary and Commissioner decide for purposes of their own to postpone her deportation indefinitely, she would, as a publicly declared alien, be subject to entirely different conditions of residence in the United States and to curtailment of the rights and privileges which she might enjoy as a citizen of the United States, such as traveling about freely, demanding and receiving protection from her government, voting, serving as a juror, and holding public office.

We think the facts we have outlined present a case fairly within the intent and purpose of the act whereby appellee may test the validity of the threat and have, as she is entitled to have, a declaratory judgment of her American citizenship. For we certainly have a case "admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged," and in these circumstances the Supreme Court has said the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. Aetna Life Ins. Co. v. Haworth, 300 U. S. 227.

The decree of the District Court declaring appellee to be a natural born citizen of the United States is in all respects affirmed.

Affirmed.

39 In United States Court of Appeals for the District of Columbia

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No. 7096. April Term, 1938

FRANCES PERKINS, SECRETARY OF LABOR, AND EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION, APPELLANTS

vs.

MARIE ELIZABETH ELG

No. 7097. April Term, 1938

MARIE ELIZABETH ELG, APPELLANT

vs.

FRANCES PERKINS, SECRETARY OF LABOR, EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION, AND CORDELL HULL, SECRETARY OF STATE

Judgment

August 1, 1938

Appeal and cross-appeal from the District Court of the United States for the District of Columbia.

These causes came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and were argued by counsel.

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said District in these causes be, and the same is hereby, affirmed.

Per Mr. Chief Justice GRONER, August 1, 1938.

40 In United States Court of Appeals for the District of Columbia

Nos. 7096–7097

[Title omitted.]

[File endorsement omitted.]

Designation of record

Filed October 8, 1938

The Clerk in the preparation of transcript of record on petition for certiorari to the Supreme Court of the United States will include the following:

1. Printed record.
2. Minute entry of the argument.
3. Decision of the Court.
4. Judgment or decree.
5. This designation.
6. Clerk's certificate.

ROBERT H. JACKSON,
Robert H. Jackson,
Solicitor General.

41 [Clerk's certificate to foregoing transcript omitted in printing.]

42 In United States Court of Appeals

Docket entry

October 15, 1938. Appellant Elg's motion for leave to file motion to amended decree. Filed.

43 In United States Court of Appeals

[Titles omitted.]

Order denying motion for leave to file motion to amend decree

October 19, 1938

On consideration of the motion of Marie Elizabeth Elg for leave to file a motion to amend the decree herein, it is ordered by the Court that the motion be, and it is hereby, denied on the ground that the object sought by the proposed motion is fully taken care of in the original opinion.

* * * * * * *

44 In United States Court of Appeals for the District of Columbia

Nos. 7096–7

[Titles omitted.]
[File endorsement omitted.]

Designation of record

Filed October 25, 1938

Now comes the appellant, Marie Elizabeth Elg, by her attorney Henry F. Butler, and designates that in the preparation of transcript of record on petition for certiorari to the Supreme Court of the United States, in addition to the record heretofore certified on designation of Robert H. Jackson, Solicitor General, the following will be included:

1. Docket entry of appellant's motion for leave to file motion to amend decree.
2. Minute entry of denial of above motion and grounds stated.
3. This designation.
4. Clerk's certificate.

HENRY F. BUTLER,
Attorney for Appellant.

45 [Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

No. 454. October Term, 1938

Order allowing certiorari

Filed December 5, 1938

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 455. October Term, 1938

Order allowing certiorari

Filed December 5, 1938

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File Nos. 42939, 42940. U. S. Court of Appeals, District of Columbia. Term No. 454. Frances Perkins, Secretary of Labor, and Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization, Petitioners, vs. Marie Elizabeth Elg. Term No. 455. Marie Elizabeth Elg, Petitioner vs. Frances Perkins, Secretary of Labor, Edward J. Shaughnessy, Acting Commissioner of Immigration and Naturalization, et al. Petitions for writs of certiorari and exhibit thereto. Filed November 1, 1938. Term Nos. 454 O. T. 1938, 455 O. T. 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1939